

Rule 4.4 Duties Concerning Inadvertently Transmitted Writings*
(Commission's Proposed Rule Adopted on June 2 – 3, 2016 – Clean Version)

A lawyer who receives a writing* relating to the representation of the lawyer's client and knows* or reasonably should know* that the writing* is privileged or subject to the work product doctrine, where it is reasonably* apparent that the writing* was inadvertently sent or produced, shall promptly notify the sender.

Comment

If a lawyer determines this Rule applies to a transmitted writing,* the lawyer should refrain from further examination of the writing* and either return the writing* to the sender, seek to reach agreement with the sender regarding the disposition of the writing,* or seek guidance from a tribunal.* See *Rico v. Mitsubishi* (2007) 42 Cal.4th 807, 817 [68 Cal.Rptr.3d 758]. If the sender is known* to be represented by counsel, the lawyer must communicate with the sender's counsel.